



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Street address: 629 East Main Street, Richmond, Virginia 23219
Mailing address: P.O. Box 10009, Richmond, Virginia 23240
Fax (804) 698-4500 TDD (804) 698-4021
www.deq.state.va.us

Robert G. Burnley
Director

(804) 698-4000
1-800-592-5482

August 25, 2003

Town of Big Stone Gap
c/o Mr. Geoffrey Cowan
Dewberry & Davis, LLC
1801 Arlington Boulevard
Fairfax, VA 22031

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: Joint Permit Application Number 01-0688
Proposed New Big Cherry Dam, Wise County, Virginia
Final VWP Individual Permit

Dear Mr. Cowan:

Pursuant to the Virginia Water Protection (VWP) Permit Program Regulation 9 VAC 25-210-10 and § 401 of the Clean Water Act Amendments of 1977, Public Law 95-217, the Department of Environmental Quality (DEQ) has enclosed the original VWP individual permit for the above-referenced project.

If followed by the permittee, the provisions and conditions contained therein comply with the applicable provisions of Sections 301, 302, 303, 306, 307, and 401(a)(1) of the Clean Water Act.

This permit is valid for **15 years** from the date of issuance. No re-issuance or extension of the permit may occur as the permit term cannot exceed the maximum of 15 years.

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have 30 calendar days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period. Refer to Part 2A of the Rules of the

Supreme Court of Virginia for additional requirements governing appeals from administrative agencies.

Alternatively, any owner under §§62.1-44.16, 62.1-44.17 and 62.1-44.19 of the State Water Control Law aggrieved by any action of the board taken without a formal hearing, or by inaction of the board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the board. Said petition must meet the requirements set forth in §1.23(b) of the board's Procedural Rule Number 1 (9 VAC 25-230-10 et seq. of the Virginia Administrative Code). In cases involving actions of the board, such petition must be filed within 30 calendar days after notice of such action is mailed to such owner by certified mail.

If you have any questions, please contact Brenda Winn at (804) 698-4516.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ellen Gilinsky".

Ellen Gilinsky, Ph.D.
Manager, Virginia Water Protection Permit Program

Enclosures: Permit Cover Page, Part I - Special Conditions, Part II - General Conditions

cc: Annette Poore, U.S. Army Corps of Engineers, Clinch Valley Field Office
Randy Owen, Virginia Marine Resources Commission

7943 1635 0008 1035 7943

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:
Dewberry & Davis LLC

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$


Postmark Here
AUG 25 2003

Name (Please Print Clearly) (To be completed by mailer)
Brenda Winn

Street, Apt. No., or PO Box No.
DEO 629 E. Main St 9th Fl.

City, State, ZIP+4
Richmond VA 23219

PS Form 3800, July 1999 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none">Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.	<p>A. Signature X  <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name), KAREN OSEI</p> <p>C. Date of Delivery AUG 26 2003</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Restricted Mail <input type="checkbox"/> Co.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>1. Article Addressed to: Town of Big Stone Gap c/o Mr. Geoffrey Cowan Dewberry & Davis LLC 1801 Arlington Blvd. Fairfax, VA 22031</p>	
<p>2. Article Number 7099 3220 0008 1035 7943 (Transfer from service label)</p>	

CERTIFIED MAIL



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VWP Individual Permit Number **01-0688**

Effective Date: August 22, 2003

Expiration Date: August 22, 2018

VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner, and in compliance with § 401 of the Clean Water Act as amended (33 USC 1251 et seq.) and the State Water Control Law and regulations adopted pursuant thereto, the board has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

Permittee: Town of Big Stone Gap, Virginia

Address: 505 East Fifth Street, Big Stone Gap, Virginia 24219

Activity Location: Big Cherry Reservoir, South Fork of Powell River, Wise County, Virginia

Activity Description: The permittee proposes to construct a new dam to replace the existing Big Cherry Dam, located on the South Fork of the Powell River. The new dam will be approximately 165 feet downstream of the existing dam. The new dam will allow the storage capacity of the Big Cherry Reservoir to be increased from approximately 363 million gallons to approximately 633 million gallons. The new dam will cause the normal pool elevation to increase from 3113 feet above mean sea level (msl) to 3120 feet msl. The project also involves the construction of access roads, stormwater management structures, erosion and sediment control structures, and an in-stream weir near the water intake of the Big Stone Gap Water Treatment Plant. Compensatory mitigation for wetland impacts shall consist of on-site restoration and preservation and off-site

contribution to the Virginia Aquatic Resources Trust Fund. Compensatory mitigation for stream channel impacts shall consist of off-site preservation and contribution to the Virginia Aquatic Resources Trust Fund.

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions, and Part II - General Conditions.

Allen Shinsky
Director, Department of Environmental Quality

August 22, 2013
Date

Part I - Special Conditions

Page 1 of 16

A. Authorized Activities

This permit authorizes:

1. The permanent placement of fill material in 109 linear feet of perennial tributaries to the existing Big Cherry Reservoir for the purposes of constructing a new dam and associated structures.
2. The temporary placement of fill material in 286 linear feet of perennial tributaries to the existing Big Cherry Reservoir for the purposes of constructing a new dam and associated structures.
3. The permanent flooding of 6,428 linear feet of perennial tributaries and 1,255 linear feet of intermittent tributaries to the existing Big Cherry Reservoir for the purposes of impounding water behind a new dam and associated structures.
4. The permanent flooding of 4.22 acres of nontidal emergent wetlands and 9.99 acres of nontidal scrub/shrub wetlands along the existing Big Cherry Reservoir and associated tributaries for the purposes of impounding water behind a new dam and associated structures.
5. The increase of the normal pool elevation of Big Cherry Reservoir from the current level of 3,113 feet above mean sea level (msl) to 3,120 feet above msl.
6. The withdrawal of surface water from the Big Cherry Reservoir, not to exceed a maximum *daily* withdrawal volume of 4.0 million gallons; a maximum *instantaneous* withdrawal rate of 2,800 gallons per minute (4 million gallons per day) with a constant flow-by rate of 0.5 million gallons per day; and a maximum *annual* withdrawal volume of 1,168 million gallons. Withdrawals shall be authorized only when the permit conditions in Part I, Section G are met.
7. The temporary use of mechanical equipment in surface waters when conducted according to the permit conditions herein.

B. Standard Project Conditions

1. The project activities shall be adhered to as described in the original Joint Permit Application, in applicant/agent responses to requests for information, in any subsequent submittals approved by DEQ-Central Office, and in all permit conditions.

Part I - Special Conditions

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2. This permit is valid for **15 years** from the date of issuance. A new permit may be necessary for the continuance of the authorized activities or any permit requirement that has not been completed, including compensation provisions. An original permit term or re-issuance permit term, plus any extensions granted, cannot exceed the maximum of 15 years.
3. Construction monitoring, compensation success monitoring, and water withdrawal monitoring shall be conducted in accordance with the permit conditions in Part I, Sections J and K, and in all applicable sections of Part II.
4. The activities authorized by this permit shall be executed in a such a manner as to minimize any adverse impact on stream beneficial uses, as defined in § 62.1-10(b) of the Code of Virginia.
5. Flows downstream of the project area shall be maintained to protect all uses in accordance with Part I, Section A.6.
6. All excavation, dredging, and/or filling in surface waters shall be accomplished in a manner that minimizes stream bottom disturbances and turbidity increases. All in-stream activities shall be conducted during low-flow conditions whenever practicable.
7. Virginia Water Quality Standards shall not be violated in any surface waters that receive discharge from temporary erosion and sediment control structures or from project activities.
8. All construction, construction access (i.e., cofferdams, sheetpiling, and causeways), and demolition activities associated with this project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable, unless authorized by this permit.
9. Untreated stormwater runoff shall be prohibited from directly discharging into any surface waters during construction activities. In accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, appropriate best management practices (BMP) shall be deemed suitable treatment prior to discharge into surface waters during construction activities.
10. The permittee shall employ measures to prevent spills of fuels, lubricants, or other pollutants into surface waters. Wet or uncured concrete shall be prohibited from entry into flowing surface waters. Temporary in-stream construction features such as cofferdams shall be made of non-erodible materials.

Part I - Special Conditions

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11. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable laws and regulations.
12. Temporary disturbances to wetlands, stream banks, and stream channels during construction shall be avoided and minimized to the maximum extent practicable. Temporarily disturbed areas shall be returned to original contours, stabilized within **30 days** following completion of work in the area, and restored to the original vegetated state.
13. Machinery in temporarily impacted surface waters shall be placed on mats or geotextile fabric, or other suitable measures shall be implemented, to minimize soil disturbance to the maximum extent practical. Mats, fabrics, or other measures shall be removed as soon as the work is complete.
14. Erosion and sedimentation controls shall be designed in accordance with the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading activities to the greatest extent practicable and maintained in good working order to minimize impacts to surface waters. These controls shall remain in place until clearing and grading activities cease and these areas have been stabilized.
15. Any exposed slopes or streambanks shall be stabilized, as per the Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, immediately upon completion of work. If used, riprap slope/streambank stabilization and riprap aprons at outfalls shall be of an appropriate size and design.
16. All materials, including fill, construction debris, excavated materials, and woody materials, that are temporarily stockpiled in wetlands shall be placed on mats or geotextile fabric; shall be immediately stabilized to prevent the material or leachate from entering surface waters; and shall be entirely removed within **30 days** following completion of that construction activity. After removal, disturbed areas shall be returned to original contours; shall be stabilized within **30 days**; and shall be restored to the original vegetated state.
17. All *non-impacted surface waters* within the project or right-of-way limits that are within fifty feet of any project activities shall be clearly flagged or demarcated for the life of the construction activity within that area. The permittee shall notify all contractors and subcontractors that *no activities are to occur in these marked areas*.

C. Stream Modification and Streambank Protection

1. Redistribution of existing stream substrate for erosion control purposes is prohibited.

Part I - Special Conditions

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2. Material removed from the stream substrate shall not be deposited into surface waters unless otherwise authorized as fill material in this permit.
3. If applicable, streambank protection structures and backfill shall be placed as close to the streambank as practical while still minimizing impacts to vegetated wetlands. No material shall be placed in excess of the minimum necessary for erosion protection.
4. Asphalt and materials containing asphalt or other toxic substances shall not be used in the construction of submerged sills, breakwaters, dams, or weirs.

D. Utilities - Deleted

E. Road Crossings - Deleted

F. Stormwater Management Facilities - Deleted

G. Water Withdrawals

1. Water withdrawal rates and volumes shall comply with the limits set forth in Part I, Section A. A minimum flow-by of 0.5 million gallons per day shall be allowed to pass over/by the dam, weir, and intake structures to ensure water supply for downstream users.
2. Water withdrawal monitoring and reporting shall comply with Part I, Sections J and K and all applicable sections of Part II. All records and information resulting from the monitoring activities required by this permit, including any records of maintenance activities to the withdrawal system, shall be retained for the life of the permit. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or as requested by the State Water Control Board.
3. The permittee shall undertake measures to minimize any fish mortality that may occur and is deemed excessive by the State Water Control Board.

H. Compensation

General Compensation Conditions

1. All temporarily disturbed wetland areas shall be stabilized within **30 days** of completing work, restored to pre-construction conditions, and planted or seeded with appropriate wetland vegetation according to cover type (emergent, scrub/shrub, or forested). The permittee shall take all appropriate measures to promote revegetation of temporarily disturbed wetland areas with wetland vegetation by the **second year** post-disturbance.

Part I - Special Conditions

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2. All temporary fills in surface waters shall be removed in their entirety. All temporarily filled and/or excavated areas in surface waters shall be returned to pre-existing contours.
3. Planting of woody plants shall occur when vegetation is normally dormant unless otherwise approved in the final compensation plan.
4. Rooted seedlings or cuttings shall originate from a local nursery or be adapted to local conditions. Vegetation shall be native species common to the area, shall be suitable for growth in local riparian conditions, and shall be obtained from areas within approximately 200 miles from the project site.
5. The installation of root wads, vanes, and other instream structures, shaping of the stream banks, and channel relocation construction shall be completed in the dry whenever practicable.
6. Bank slopes in compensation areas shall be flattened to reduce stream bank erosion, where practical.
7. All heavy equipment used for restoration activities shall be placed on temporary mats or geotextile fabric, or other suitable, temporary measures are to be used, in order to minimize soil disturbance to the maximum extent practicable. Temporary access materials shall be removed entirely as soon as the work is complete.
8. All vegetation removal for abatement and control purposes shall be done by manual means, unless authorized by DEQ-Central Office in advance. Herbicides or algicides shall not be used in or immediately adjacent to compensation areas without prior authorization by DEQ-Central Office.

On-Site Wetland Compensation

- page 2 of 7
9. A portion of the total emergent wetland impacts shall be compensated *on site* at a ratio of 1:1, and a portion of the total scrub/shrub wetland impacts shall be compensated *on site* at a ratio of 1.5:1. The permittee shall ensure that 2.5 acres of palustrine emergent wetlands and 2.85 acres of palustrine scrub/shrub wetlands (collectively termed restoration areas) are restored through the re-establishment of these wetland communities along the perimeter of the reservoir, once the normal pool elevation has been increased. The permittee shall ensure that 1.1 acres of existing palustrine scrub/shrub wetlands (conversion areas) are converted to palustrine emergent wetlands.
 10. Restoration and conversion areas shall meet the specified success criteria presented in the final wetland mitigation plan by the end of fifth wetland mitigation monitoring year after

Part I - Special Conditions

normal pool elevation increase.

Off-Site Wetland Compensation

- page 3 of 7 {
11. A portion of the total emergent wetland impacts shall be compensated *off site* at a ratio of 1:1, and a portion of the total scrub/shrub wetland impacts shall be compensated *off site* at a ratio of 1.5:1, to be confirmed through the submittal of a final wetland compensation plan. The permittee shall compensate for 0.62 acres of palustrine emergent wetlands and for 12.14 acres of palustrine scrub/shrub wetlands at a minimum through contributions to the Virginia Aquatic Resources Trust Fund (Trust Fund), provided the contributions are accepted by the Trust Fund.

Off-Site Stream Compensation

- page 3 of 7
12. A portion of the total stream impacts shall be compensated *off site* at a ratio of approximately 44:1, and a portion of the total stream impacts shall be compensated *off site* at a ratio of 1:1, to be confirmed through the submittal of a final stream compensation plan. *Off-site* preservation for 6,428 linear feet of perennial stream channel and 1,255 linear feet of intermittent stream channel shall consist of 2.95 miles of upland, riparian buffer preservation, including 200 feet total in width, along the South Fork of the Powell River, downstream of the proposed project. The permittee shall compensate for 274 linear feet of perennial stream channel through the Virginia Aquatic Resources Trust Fund (Trust Fund), provided the contributions are accepted by the Trust Fund, and/or through off site stream restoration and improvement activities.
13. The permittee shall have the authority to use heavy equipment within the stream channel during stream restoration activities, if applicable, when site conditions prohibit access from the streambank. The equipment shall be stationed on cobble bars and the activities conducted in the dry or during low flow conditions, whenever possible. All heavy equipment shall be placed on mats, geotextile fabric, or other suitable measures to minimize soil disturbance to the maximum extent practicable. Mats shall be removed as soon as the work is complete.

I. [This Section Not Used in Permit]

J. Monitoring

Project Construction Monitoring

1. The permittee shall conduct photographic monitoring of all construction activities occurring in jurisdictional areas covered by this permit.

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- a. Photographs of existing stream, dam, and reservoir conditions shall be taken prior to the increase in normal pool elevation and the impoundment of water behind the new weir.
 - b. Photographic monitoring of construction activities in jurisdictional areas shall occur **prior to** commencement of construction in a particular area, at the **end of each month** during construction in that area, and **within one week** after completing construction activities in the area. Construction activities that shall be documented may include, but are not limited to, the installation and maintenance of erosion and sediment controls; flagged non-impact surface waters; construction access and staging areas; filling, excavation, and dredging activities; culvert installation; dredge disposal; and site stabilization, grading, and associated restoration activities. When construction activities are dormant in a particular jurisdictional area covered by this permit, photographs at that area shall not be required until construction activities resume in that area.
 - c. An enumerated photo station, whose directional orientation shall remain constant during all monitoring events, shall be established at each construction site in jurisdictional areas. Photo stations may be established via water craft or temporary floating structures.
 - d. Each photograph taken at construction sites in jurisdictional areas shall be labeled with the permit number, the jurisdictional area covered by this permit, the photo station number, the photograph orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the construction activity occurring at the time of the photograph. This information shall be provided as a separate attachment to each photograph if necessary.
2. The permittee shall conduct photographic monitoring of all *temporarily* disturbed surface waters covered by this permit. Photographic monitoring of temporarily disturbed surface waters shall occur **after** construction in a particular area is complete and shall document that the area has been restored in compliance with the permit conditions.

On-Site Wetland Compensation Monitoring

3. *On-site* wetland restoration and conversion area monitoring shall continue for a minimum of **seven years** from the time the normal pool elevation is raised, unless this time period is shortened or extended due to the necessity for corrective action. For purposes of computing the areas of restoration and conversion, the wetland boundary shall be based on the results of the hydrology, soils, and vegetation monitoring data. Calculation of total wetland acreage by wetland type shall be based on that boundary at the end of the fifth monitoring year and shall be shown on a mitigation map. The map shall be included in the fifth year monitoring report submitted to DEQ-Central Office.

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4. Photographic monitoring within the emergent wetland and scrub/shrub wetland restoration and conversion areas shall be conducted **prior to** impounding water behind the new dam, **within one week** of raising the normal pool elevation, and then **once in August or September of monitoring years 2, 3, 5, and 7.** *taken 8/21/06* *year 2 photo with 8/30/07 package*
- a. Photos shall be taken from the same location and orientation during each monitoring event. Photo stations may be established via water craft or temporary floating structures.
- b. Each photograph shall be labeled with the permit number, the photo orientation, the date and time of the photograph, the name of the person taking the photograph, and a brief description of the activity, or such information shall be attached to the photographs.
5. Vegetation data collection shall occur in **August or September of monitoring years 2, 3, 5, and 7** and shall consist of recording the establishment of emergent and woody vegetation, expressed as percent cover, and the presence and species of vegetation considered to be invasive (which include, at a minimum, the species on Department of Conservation and Recreation's Invasive Alien Plant Species of Virginia list).
6. Hydrology monitoring data for *on-site* wetland restoration and conversion areas shall consist of average precipitation amounts, either from on-site measurements or from the closest weather station, and average pool elevation data measured directly from the reservoir. These data shall be recorded **monthly during each monitoring year.**
7. Habitat data collection shall occur in **August or September of monitoring years 2, 3, 5, and 7** and shall consist of recording any observations that the restoration area is being used by terrestrial and/or aquatic wildlife.

Off-Site Stream Compensation Monitoring

- will submit existing w/in 60 days of final plan approval; will submit new by 12/31 of 2nd monitoring yr.
8. The permittee shall conduct monitoring of the *off-site* riparian buffer preservation area (2.95 miles long and 200 feet wide) along the South Fork of the Powell River by aerial photography. One or more *existing* aerial photograph(s) shall be submitted, or one or more *new* aerial photograph(s) shall be taken, **prior to** completion of the new dam and weir. One additional, *new* aerial photograph shall be taken during **monitoring year five.** *2010* All aerial photographs shall be labeled with the permit number, the date and time of the photograph, the photograph scale, and the name of the person or company taking the photograph, or this information shall be attached to the photograph.

aerial photos taken 3/21/06 and 4/11/06 (submitted w/ 8/30/06 package); aerial photo taken 3/23/04 and 3/9/07; ground photos taken 8/6/07 (submitted w/ 8/30/07 package)

Part I - Special Conditions

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Water Withdrawal Monitoring

/ have we rec'd any of this?

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9. The permittee shall keep a record of the dates and time that stream flow-by is measured, *to be recorded in cubic feet per second (cfs) and million gallons per day (mgd)*, at the monitoring station (weir downstream of new dam), and the name of the individual reporting the data. Such data shall be recorded **once per day for the months of May, June, July, August, September, October and November of each permit year** and shall be retained for the life of the permit.

K. Required Notifications and Submittals

General Notification and Submittal Conditions

1. All written communications required by this permit shall be submitted to the Virginia Department of Environmental Quality, Office of Water Permits, 629 East Main Street, Richmond, Virginia 23219 (DEQ-Central Office). The permit number shall be included on all correspondence.
2. All reports required by this permit and other information requested by DEQ-Central Office shall be signed by the applicant or a person acting in the applicant's behalf with the authority to bind the applicant. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above; and
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization shall be submitted to DEQ-Central Office prior to or together with any separate information, or applications to be signed by an authorized representative.

3. All submittals required by this permit, and signed by the applicant, agent, or permittee, shall contain the following certification statement: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and

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complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

4. Any fish kills or spills of fuels or oils shall be reported **immediately** upon discovery to DEQ-Central Office at 804-698-4000. If no response is received, the spill shall be reported to the Virginia Department of Emergency Services at 804-674-2219 or National Response Center (NRC) at 1-800-424-8802.
5. Violations of Virginia Water Quality Standards shall be reported within **24 hours** to DEQ-Central Office at 804-698-4000.
6. The shall be notified within **24 hours or as soon as possible on the next business day** when potential environmentally threatening conditions are encountered which require debris removal or involve potentially toxic substances. Measures to remove the obstruction, material, or toxic substance, or to change the location of any structure, are prohibited until approved by DEQ-Central Office.
7. The permittee shall notify the DEQ-Central Office of any additional impacts to surface waters, including wetlands, or any change to the type of surface water impacts associated with this project. Any additional impacts to surface waters, including wetlands, or any change to the type of surface water impacts, shall be subject to individual permit review and/or modification of this permit. Compensation may be required.
8. The permittee shall notify all contractors and subcontractors that *no activities are to occur in designated non-impacted surface waters* as per Part I, Section B.20.

Project Construction Submittals

9. Final Plans and Specifications for activities authorized by this permit shall be submitted **ten days prior to the beginning of each construction component**. Construction shall be performed in accordance with the submitted Plans and Specifications. Any changes to the final construction plans in permitted areas shall be submitted to DEQ-Central Office **ten days prior to the commencement of construction activities in those areas**.
10. DEQ-Central Office shall be notified in writing at least **ten days** prior to the initiation of project construction activities authorized under this permit so that inspections can be planned, if deemed necessary. The notification shall include identification of the impact areas at which work will occur and a projected schedule for completing work at each permitted impact area.
11. DEQ-Central Office shall be notified within **15 days** of completing each phase of project construction.

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12. Construction monitoring reports shall be submitted to DEQ-Central Office within **15 days** of each construction monitoring event. The reports shall include the following, as appropriate:
- A written narrative describing the work performed at each construction site in jurisdictional areas, with emphasis on activities conducted to comply with the permit conditions; dates on which the work at each construction site in jurisdictional areas was initiated and/or completed; a summary of permit non-compliance events or problems encountered, the subsequent notifications, and the corrective actions taken; a summary of anticipated work to be completed during the next reporting period (if applicable); and any changes to the completion date for the entire project.
 - A labeled site map depicting all impact areas and photo stations.
 - Properly labeled photographs as described in Part I, Section J for all construction activities that permanently or temporarily impacts jurisdictional areas.

Wetland Compensation Submittals

13. The permittee shall submit a final *on-site and off-site wetland* compensation plan for DEQ-Central Office approval after project construction has begun but **prior to raising the normal pool elevation** behind the new dam. The permittee shall allow **60 days** for DEQ-Central Office to review and approve the final *wetland* compensation plan prior to impacting wetland areas. The final *wetland* compensation plan as approved by DEQ-Central Office shall be an enforceable requirement of this permit. Any deviation from the approved final plan must be submitted to DEQ-Central Office for approval **at least ten days prior** to implementation. The plan shall include the following as applicable:
- the goals and objectives of the plan, in terms of replacement of functions and values and expressed in acres of each wetland type;
 - discussion of buffers;
 - discussion of measures necessary for the success of the site;
 - a location map, including latitude and longitude (to the nearest second) at the center of the site;
 - wetland delineation confirmation, data sheets, and maps for existing wetland areas on the proposed site(s);
 - a grading plan;
 - site access plan;
 - a *wetland* compensation monitoring plan for *on-site* compensation areas, including proposed success criteria, monitoring goals, and the location of photo stations, soil sampling points (as appropriate), vegetation sampling points, and reference wetlands (if available);
 - an abatement and control plan for undesirable plant species, including, at a minimum,

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4/9/06, plan
submitted 4/13/06

Part I - Special Conditions

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the species listed on DCR's Invasive Alien Plant Species of Virginia list, and including procedures to notify DEQ-Central Office of any undesirable plant species occurrences, methods of removal, and successful control;

- an erosion and sedimentation control plan
- proof of payment for any contributions to the Virginia Aquatic Resources Trust Fund

14. The permittee shall ensure the protection of all *on-site wetland* compensation areas *within the property boundaries of the United States Forest Service*, including property around the existing upper reservoir (above dam Circa 1900) from 3,118 feet above msl to 3,122 feet above msl (collectively termed compensation areas), by means of a legally binding Memorandum of Agreement (MOA) between the Town of Big Stone Gap, Virginia (Town) and the United States Forest Service (USFS). The MOA shall restrict uses within the compensation areas, as delineated by a metes and bounds survey, and protect the compensation areas in perpetuity. Unless specifically authorized by DEQ-Central Office through the issuance of a VWP individual permit, modification of this permit, or waiver thereof, the restricted uses shall include ditching, land clearing for purposes other than recreational access, filling, dumping, excavating, draining, flooding, or impounding. Restricted uses shall not include maintenance or corrective action measures authorized by DEQ-Central Office. The restricted uses shall be specified in the language of the MOA. The compensation area boundaries shall be delineated by a metes and bounds survey and platted within **180 days** of final *wetland* compensation plan approval. The plat and signed MOA shall be submitted to DEQ-Central Office for approval within **15 days** of plat completion.

- plan*
15. The permittee shall ensure the protection of all *on-site wetland* compensation areas *within private individual property boundaries*, including property around the existing upper reservoir (above dam Circa 1900) from 3,118 feet above msl to 3,122 feet above msl (collectively termed compensation areas), by means of conservation easements (protective instruments). The protective instruments shall restrict uses within the compensation areas, as delineated by a metes and bounds survey, and protect the compensation areas in perpetuity. Unless specifically authorized by DEQ-Central Office through the issuance of a VWP individual permit, modification of this permit, or waiver thereof, restricted uses shall include ditching, land clearing for purposes other than recreational access, filling, dumping, excavating, draining, flooding, or impounding. Restricted uses shall not include maintenance or corrective action measures authorized by DEQ-Central Office. The restricted uses shall be specified in the language of the protective instruments, and the protective instruments shall be recorded in the Chains-of-Title to the properties. The compensation area boundaries shall be delineated by a metes and bounds survey and platted within **180 days** of final *wetland* compensation plan approval, and the plat shall be submitted to DEQ-Central Office for approval within **15 days** of completion. Proof that the protective instruments were recorded shall be submitted within **30 days** of plat approval by DEQ-Central Office.

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16. The permittee shall ensure the protection of all *on-site wetland* compensation areas *within the Town of Big Stone Gap's property boundaries*, including property around the existing upper reservoir (above dam Circa 1900) from 3,118 feet above msl to 3,122 feet above msl (collectively termed compensation areas), by means of conservation easements (protective instruments). The protective instruments shall restrict uses within the compensation areas, as delineated by a metes and bounds survey, and protect the compensation areas in perpetuity. Unless specifically authorized by DEQ-Central Office through the issuance of a VWP individual permit, modification of this permit, or waiver thereof, restricted uses shall include ditching, land clearing for purposes other than recreational access, filling, dumping, excavating, draining, flooding, or impounding. Restricted uses shall not include maintenance or corrective action measures authorized by DEQ-Central Office. The restricted uses shall be specified in the language of the protective instruments, and the protective instruments shall be recorded in the Chains-of-Title to the properties. The compensation area boundaries shall be delineated by a metes and bounds survey and platted within **180 days** of final *wetland* compensation plan approval, and the plat shall be submitted to DEQ-Central Office for approval within **15 days** of completion. Proof that the protective instruments were recorded shall be submitted within **30 days** of plat approval by DEQ-Central Office.

17. Monitoring reports for the *on-site wetland* compensation areas (on-site wetland restoration and conversion areas) shall be submitted by **November 30th** of each **monitoring year**.

a. The *Year 1* report shall include:

- submitted 3/20/06
- photos taken prior to impounding water behind the new dam, within one week of raising the normal pool elevation, and in August/September (if not over-lapping the previous timeframes) (Part I, Section J.5); and
 - hydrology monitoring data (Part I, Section J.6)
- Submitted 10/20/07 but missing Oct 2006 precip data

b. The *Years 2 and 3 and the Year 7* reports shall include:

- submitted 8/30/07
- photos taken in August/September (Part I, Section J.5);
 - vegetation data (Part I, Section J.6);
 - hydrology monitoring data (Part I, Section J.6); and
 - habitat data (Part I, Section J.7)

c. The *Year 5* report shall include:

- calculation of total wetland acreage by wetland type and map showing such information (Part I, Section J.4)
- photos taken in August/September (Part I, Section J.5);
- aerial photograph of stream buffer preservation area;
- vegetation data (Part I, Section J.6);

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- hydrology monitoring data (Part I, Section J.6); and
- habitat data (Part I, Section J.8)

18. If the *on-site wetland* compensation areas fail to be established at the end of the fifth monitoring year, and as per the success criteria approved in the final *wetland* compensation plan, the reasons for this failure shall be determined, and a corrective action plan, schedule, and monitoring plan shall be submitted to DEQ-Central Office within **30 days** after submittal of the fifth year's monitoring report. The permittee shall be responsible for correcting all *wetland* compensation area problems. Should significant changes be necessary to ensure success, the monitoring period shall be extended until success is achieved. In lieu of corrective measures to ensure success, the permittee may opt to make a contribution to the Virginia Aquatic Resources Trust Fund (Trust Fund) for the portion of the on-site wetland compensation that has not achieved success by the end of the second monitoring year, provided the contribution is accepted by the Trust Fund. The success of the compensation areas shall be based on the success criteria included in the approved final *wetland* compensation plan.

Stream Compensation Submittals

19. The permittee shall submit a final *on-site and off-site stream* compensation plan for DEQ-Central Office approval after project construction has begun but **prior to raising the normal pool elevation** behind the new dam. The permittee shall allow **60 days** for DEQ-Central Office to review and approve the final *stream* compensation plan prior to impacting stream areas. The final *stream* compensation plan as approved by DEQ-Central Office shall be an enforceable requirement of this permit. Any deviation from the approved final plan must be submitted to DEQ-Central Office for approval **in advance** of implementation. The plan shall include the following as applicable:

- a detailed narrative of the planned *stream* buffer preservation, including a location map with the buffer clearly marked
- a narrative of the goals and objectives of the plan in terms of replacement of functions and values
- preservation area access plan
- a *stream* compensation monitoring plan
- an abatement and control plan for undesirable plant species, including at a minimum, the species listed on DCR's Invasive Alien Plant Species of Virginia list, and including procedures to notify DEQ-Central Office of any undesirable plant species occurrences, methods of removal, and successful control
- livestock access limiting measures
- proof of payment for any contributions to the Virginia Aquatic Resources Trust Fund

20. The final *stream* compensation plan shall include protection of the *off-site stream* buffer preservation area along the South Fork of the Powell River (stream compensation area) by means of conservation easements (protective instruments). The protective

Condition
not met

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instruments shall restrict uses within the *stream* compensation area, as delineated by a metes and bounds survey. Unless specifically authorized by DEQ-Central Office through the issuance of a VWP individual permit, modification of this permit, or waiver thereof, restricted uses shall include ditching, land clearing for purposes other than limited recreational access, filling, dumping, excavating, draining, flooding, or impounding. Restricted uses at the *stream* buffer preservation compensation area shall not include maintenance, corrective action measures authorized by DEQ-Central Office, or public access for the purposes of recreation. The protective instrument language shall contain the restricted uses as described above, and shall be recorded in the Chain-of-Title to the property. The stream compensation area shall be delineated by a metes and bounds survey and platted within **180 days** of final *stream* compensation plan approval, and the plat shall be submitted to DEQ-Central Office for approval within **15 days** of completion. Proof that the protective instrument was recorded shall be submitted to DEQ-Central Office within **30 days** of plat approval.

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21. Existing aerial photography for the *off-site stream* buffer preservation areas (South Fork of Powell River), proposed as compensatory mitigation, shall be submitted to DEQ-Central Office **within 60 calendar days** of final stream compensation plan approval. New aerial photography of stream buffer preservation areas shall be submitted to DEQ-Central Office **by December 31st of the fifth monitoring year**. The photograph shall include the required information as detailed in Part I, Section J.9. *submitted 8/30/07*

Water Withdrawal Submittals

22. The applicant shall submit any existing regional or local water supply conservation plans that apply to the service areas being supplied by the water withdrawn under this permit. The plan shall be submitted to the DEQ-Central Office **prior to** raising the normal pool elevation in the reservoir.
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23. A brief report shall be prepared summarizing the dates on which the flow-by rate did not meet the minimum of 0.5 million gallons per day (mgd), as required by this permit, and the volume of water released from the dam on such days to meet the minimum flow-by rate of 0.5 mgd. Each monitoring report shall be submitted to DEQ-Central Office in accordance with these permit conditions by the **10th of the month following data collection** (for example, should May experience days of below minimum flow-by, the monitoring report would be due June 10th of the respective year).
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24. Applicable to users whose average daily withdrawal during any single month exceeds 10,000 gallons per day: The permittee shall report water withdrawals to DEQ-Central Office by **January 31st** of the next year, as required under State Water Control Board (SWCB) Water Withdrawal Reporting Regulation (9 VAC 25-200 et seq.). The annual monitoring report shall contain the following information: the permittee's name and

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address, the sources and locations of water withdrawal, the cumulative volume of water withdrawn each month of the calendar year, the maximum day withdrawal and the month in which it occurred, and the method of withdrawal measurement.

Alternatively, for permittees subject to the Virginia Department of Health (VDH) Waterworks Regulations, annual reports to DEQ-Central Office may include the source and location of water withdrawals, the type of use for the water withdrawn, and reference to the reports filed with VDH (containing monthly withdrawal data).

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A. Duty to Comply

The permittee shall comply with all conditions of the VWP permit. Nothing in the VWP permit regulations shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, and prohibitions. Any VWP permit violation is a violation of the law and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or re-issuance.

B. Duty to Cease or Confine Activity

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

C. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit that may have a reasonable likelihood of adversely affecting human health or the environment.

D. VWP Permit Action

1. A VWP permit may be modified, revoked and re-issued, or terminated as set forth in 9 VAC 25-210 et seq.
2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185 (VWP Permit Extension).
3. VWP permits may be modified, revoked and re-issued, or terminated upon the request of the permittee or other person at the board's discretion, or upon board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in the Duty to Comply subsection above, or for other reasons listed in 9 VAC 25-210-180 (Rules for Modification, Revocation and Re-issuance, and Termination of VWP permits).

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E. Inspection and Entry

Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances,:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit, and;
3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

F. Duty to Provide Information

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking and re-issuing, or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports, and other relevant information shall be submitted as required by the board prior to commencing construction.

G. Monitoring and Records Requirements

1. Monitoring of parameters other than pollutants, if required by this permit, shall be conducted according to approved analytical methods specified in these permit conditions. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including calibration and maintenance records, original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.
4. Records of monitoring information shall include:
 - a. The date, exact location, and time of sampling or measurements;

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- b. The name of the individuals who performed the sampling or measurements;
- c. The date and time the analyses were performed;
- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations, and bench data used;
- f. The results of such analyses; and
- g. Chain-of-custody documentation.

H. Transferability

This VWP permit may be transferred to a new permittee only by modification to reflect the transfer, by revoking and re-issuing the permit, or by automatic transfer. Automatic transfer to a new permittee shall occur if:

- 1. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;
- 2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of VWP permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility, coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and
- 3. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and re-issue the VWP permit.

I. Property rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

J. Re-opener

Each VWP permit shall have a condition allowing the re-opening of the permit for the purpose of modifying the conditions in order to meet new regulatory standards duly adopted by the board. Cause for re-opening VWP permits may include substantial or material changes in project circumstances, on which the previous VWP permit was based, or special studies conducted by the board or the permittee, which show material and substantial change

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since the time the permit was issued and thereby justifying permit modification or revocation and re-issuance.

K. Compliance with State and Federal Law

Compliance with this VWP permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

L. Severability

The provisions of this VWP permit are severable.

M. Permit Modification

A VWP permit may be modified, but not revoked and re-issued except when the permittee agrees or requests, when any of the following developments occur:

1. When additions or alterations have been made to the affected facility or activity which require the application of VWP permit conditions that differ from those of the existing VWP permit or are absent from it;
2. When new information becomes available about the operation or activity covered by the VWP permit which was not available at VWP permit issuance and would have justified the application of different VWP permit conditions at the time of VWP permit issuance;
3. When a change is made in the promulgated standards or regulations on which the VWP permit was based;
4. When it becomes necessary to change final dates in schedules due to circumstances over which the permittee has little or no control such as acts of God, materials shortages, etc. However, in no case may a compliance schedule be modified to extend beyond any applicable statutory deadline of the Act;
5. When changes occur which are subject to "re-opener clauses" in the VWP permit; or
6. When the board determines that minimum instream flow levels resulting from the permittee's water withdrawal are detrimental to the instream beneficial use, when water withdrawal should be subject to further net limitations, or when an area is declared a Surface Water Management Area pursuant to §§ 62.1-242 through 62.1-253 of the Code of Virginia, during the term of the VWP permit.

N. Permit Termination

After notice and opportunity for a formal hearing pursuant to Procedural Rule No. 1 (9 VAC 25-230-100) a VWP permit can be terminated for cause. Causes for termination are as follows:

1. Noncompliance by the permittee with any condition of the VWP permit;
2. The permittee's failure in the application or during the VWP permit issuance process to disclose fully all relevant facts or the permittee's misrepresentation of any relevant facts at any time;
3. The permittee's violation of a special or judicial order;
4. A determination by the board that the permitted activity endangers human health or the environment and can be regulated to acceptable levels by VWP permit modification or termination;
5. A change in any condition that requires either a temporary or permanent reduction or elimination of any activity controlled by the VWP permit; and
6. A determination that the permitted activity has ceased and that the compensatory mitigation for unavoidable adverse impacts has been successfully completed.

O. Civil and Criminal Liability

Nothing in this VWP permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and Hazardous Substance Liability

Nothing in this VWP permit shall be construed to preclude the institution of legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Unauthorized Discharge of Pollutants

Except in compliance with this VWP permit, it shall be unlawful for the permittee to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances;
2. Excavate in a wetland;

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3. Otherwise alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, to animal or aquatic life, to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; and
4. On or after October 1, 2001 conduct the following activities in a wetland:
 - a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions
 - b. Filling or dumping
 - c. Permanent flooding or impounding
 - d. New activities that cause significant alteration or degradation of existing wetland acreage or functions

R. Permit Extension

Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit, shall submit written notification request if an extension. The permittee must file the request prior to the expiration date of the VWP permit. Under no circumstances will the extension be granted for more than 15 years beyond the original effective date of the VWP permit. If the request for extension is denied, the VWP permit will still expire on its original date and, therefore, care should be taken to allow for sufficient time for the board to evaluate the extension request and to process a full VWP permit modification, if required.